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SUBJECT: 2008 SPECIAL 301 REVIEW: EMBASSY BANGLADESH INPUT

REF: SECSTATE 9475

¶1. (SBU) SUMMARY: The Government of Bangladesh (GOB) does not effectively enforce intellectual property rights (IPR) protections. Piracy of optical disks, software and books is rampant in Bangladesh. The GOB is currently focused on higher prioritized projects, including ensuring a transition to a democratic government and responding to natural disasters that threaten the livelihoods of millions. In the past year, no high-level leadership support for enforcement of IPR laws and regulations has been demonstrated. To create an external incentive for substantive action on IPR protection, Post concurs with the recommendation from industry groups and the Regional IPR Attach to place Bangladesh on the Special 301 Watch list. END SUMMARY

GENERAL IP CLIMATE

¶2. (SBU) The overall Intellectual Property (IP) climate in Bangladesh is characterized by a lack of effective enforcement of copyrights, and a limited protection of trademarks. The existing domestic legislation includes the Trademarks Act, 1940; Patents and Designs Act, 1911; and the Copyright Act, 2000. The Copyright Law enacted in July 2000 updated Bangladesh's copyright system with the goal of bringing domestic copyright legislation into compliance with World Trade Organization's Trade-Related Aspects of Intellectual Property (TRIPS) requirements that will be applicable to Bangladesh in 2013 (following a 2006 extension granted to least developed countries). Further patent and trademark laws were drafted in 2005, but have not been formally enacted.

A vibrant economy in cheap, pirated optical disks (OD) inhibits the supply of legitimately licensed OD entertainment products from the US. No legitimate international content (European or US) DVDs are commercially available in Bangladesh. For international music content, the local office of the International Federation of Phonographic Industries (IFPI) estimates 95% of international music content is pirated. Piracy in Bangladesh is helped by high tariffs on imported CDs and DVDs.

Sales of pirated English-language books are unchecked. Certain UK text-book manufacturers have developed market-specific pricing schemes (offering books at a cost less than in India, and just above production costs) to

establish legitimate distribution networks and to demonstrate the quality advantages of legitimate products. The GOB,s Ministry of Education is also a victim of piracy: even government produced textbooks are pirated. However, on February 24 Bangladesh,s Rapid Action Battalion (RAB) raided several book sellers in Bangla Bazaar, seizing over 5,000 pirated books. The RAB stated it was acting on instructions from the Ministry of Education. Beyond this, no consistent enforcement steps have been taken in the past year to curb the pirating of books in Bangladesh.

The deficient IP climate in Bangladesh hurts domestic Bangladeshi producers as well as international IP rights owners. One Bangladeshi software producer seeking international IP protection has developed the practice of registering the copyright for his software in Singapore. Bangladeshi filmmakers seeking to maintain control over distribution and product quality price their DVDs at the level of pirated copies, to dissuade pirates from targeting their productions. Bangladeshi musicians fare somewhat better) lower cost structures and effective sales and distribution networks apparently leads to a relatively stronger market preference for legitimate Bangla music products. IFPI estimates that the market rate of piracy for domestically produced Bangladeshi music is about 60%.

Bangladesh,s airwaves also host IPR violations. ECONOFF has learned from commercial FM radio station managers that no station pays royalties on the music (international or domestic) broadcasted. A businessman working in telecommunications and software reports that Bangladesh,s cell phone operators themselves are generally careful to ensure that ringtones and wallpaper images they promote are licensed. However, when cell phone networks act as carriers for third party sellers of ringtones and wallpaper, they do

not take responsibility for ensuring the content is legitimately licensed.

ENFORCEMENT OVERVIEW

13. (SBU) The only notable enforcement actions against copyright violations have been against pirated domestic motion-picture content. Bangladesh,s Film Development Corporation (a state-run enterprise) and the Movie Producers,s Association have worked with law enforcement agencies to curb the piracy of their films (on DVDs) prior to commercial release in cinemas. In the past one year, IFPI reports that one or two of these enforcement actions (against pirated Bangla films) have been conducted every 30-40 days. Enforcement action on pirated Bangladeshi motion-picture content is apparently the result of specific lobbying efforts by economically damaged parties. There have also been enforcement actions against purveyors of pornographic content DVDs. However, these actions appear motivated by laws against pornography.

Trademark violations can be taken up in civil courts, and the threat of legal suits is sometimes sufficient to encourage compliance by trademark violators. Brands that are identical or deceptively similar to Taco Bell and KFC are openly doing business in Bangladesh. Even if a case is brought against an alleged trademark violator, there is no guarantee of success for the international trademark owner. A case brought by Domino,s Pizza (US) against a local establishment known as Dominous Pizza was decided in prior years in favor of the Bangladeshi company.

SPECIFIC ASPECTS OF IPR PROTECTION

14. (SBU) The following sections address specific area of interest noted REFTEL.

A) Notorious Markets: Dhaka,s popular Bashundhara City Mall contains a retail CD and DVD bazaar. Based on several surveys by EMBOFF, and confirmed by the regional IPR Attach, no

legitimately licensed OD products are available in the dozens of stores and stalls selling ODs. Throughout the mall, restaurants, store names, product names, fake branded goods, all feature clear trademark violations. Several wholesale markets also exist for pirated OD content: Pathuakhali, Stadium Market, New Market and Nilkhet are notable within Dhaka. For pirated books, Bangla Bazaar and Nilkhet are known sources. These markets are the major supply sources for smaller retailers.

B) Optical Media Piracy (CDs, VCDs, DVDs): Bangladesh does not regulate optical media manufacturing. There is no licensing of optical media equipment and material inputs for the purpose of controlling domestic production and export of pirated ODs. There is no legal requirement for Bangladeshi producers to use source identification (SID) codes on locally manufactured CDs. Industry representatives report that the majority of Bangladesh's pirated OD manufacturing base has been re-located from Pakistan into Bangladesh (following stronger IPR enforcement efforts in Pakistan). Additionally, they report Bangladesh is also becoming an exporter of pirated OD products, with unmarked small packages of disks being sent out of the country through the Bangladesh postal system.

C) Software: Bangladesh's IT infrastructure (public and private) is based on the use of pirated software. According to a 2007 study by the Business Software Alliance, Bangladesh has the highest rate of software piracy in Asia, at 92%. Worldwide, this places Bangladesh within the top five worst countries for software piracy. Pirated software is easily and inexpensively available. Companies that seek to purchase licensed software are required to follow complex import procedures involving letters of credit and pre-shipment inspections.

The GOB does not ensure that government offices, state-owned enterprises and semi-government organizations use only licensed software or that they obtain sufficient licenses for all copies of software in use by the GOB. A domestic software services provider reports the GOB has copied customized software without payment for additional licenses. A Bangladeshi IT services provider complains that software piracy by the GOB has sometimes been exacerbated by at least

one international donor though project specifications that specify certain software requirements without accompanying financial provisions.

D) TRIPS Implementation, FTA Implementation and Other IP-Related Issues: Bangladesh is a signatory of the Uruguay Round agreements, including the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), and was obligated to bring its laws and enforcement efforts into TRIPS compliance by January 1, 2006. However, a November 2005 WTO decision granted extended the period for TRIPs compliance for least-developed countries until July 2013. Categorized as a least-developed country by the WTO, Bangladesh has until July 2013 to bring its laws and enforcement efforts into TRIPS compliance.

E) Data Protection: There is no existing legislation in Bangladesh on data protection (for pharmaceutical and agricultural chemical companies), or any known efforts to develop such regulations. Regarding patent infringing pharmaceutical products, Bangladesh (as a least developed nation) has a WTO exemption for TRIPs compliance on pharmaceuticals until 2016.

F) Production, Import and Export of Counterfeit Goods: Companies have in prior years reported receiving cooperation from the Bangladesh Standards and Testing Institute (BSTI), a government agency with responsibility for standards and labeling regulation. BSTI has used its authority to regulate deceptive labeling and trade practices to address IPR violations in the misbranding of consumer goods. While BSTI has been willing to investigate specific complaints, it has insufficient resources to pursue a proactive campaign against

IPR violations in consumer goods. Post has received a complaint in the past year regarding goods for sale in Bangladesh falsely tagged as &made in the USA.⁸ One company has complained about fake cosmetics being imported into Bangladesh for sale in domestic markets. Other than OD products, no specific complaints have been received about fake goods produced in Bangladesh for export.

G) Enforcement: The GOB does not devote adequate resources to the enforcement of IPR in Bangladesh. Lack of technical expertise remains a significant problem for relevant government agencies.

COPYRIGHT OFFICE: UNDERSTAFFED, INEFFECTIVE

The Copyright Office said they normally receive about 400 to 500 applications per year. They point out how short-staffed their office is: the Copyright Office presently has only four professionals, out of which only one person is involved in the examination of copyright applications. The office is also acutely aware of its deficient grasp of the nuances and technical details of copyright law.

Regarding the initiation of legal complaints against any IPR violators, the Copyright Office has the power to act on its own, but it does not often exercise this authority due to insufficient staffing. The Copyright Office will refer to police any complaint brought by an IP rights holder. Legal action against two pirate optical-disk producers was initiated from the Copyright office in September 2007. These enforcement efforts, one against a foreign-owned company (the owner is Pakistani and lives in the UAE), are currently pending before the courts.

The Copyright Office described plans to initiate enforcement through mobile courts, to include a Magistrate, accompanied by 10 to 15 police officers. The Copyright Office would head the mobile court. As a warning to IPR violators, the Copyright Office said it would extensively advertise the establishment of this court. No action or future date has been set to commence this initiative. While they stated an intention to take enforcement action on optical disks, it was made clear that they would take no action will be taken on the issue of pirated books, because of the potential impact on Bangladesh,s students, invoking the TRIPS exemption for Bangladesh based on its status as a least-developed country. (Notably, the Ministry of Education recently did prompt action against pirated textbooks.) The Copyright Office requested USG help for translation of Bangladesh,s Copyrights Law, technical training, computerization of the Copyright Office, and assistance with setting up a website.

DEPARTMENT OF PATENTS, DESIGNS AND TRADEMARKS

According the Department of Patents, Designs and Trademarks, Bangladesh receives very few patent applications; the majority of his office,s work is in the registration of trademarks. The Patent Department reported that in the years 2003, 2004, 2005 and 2006 the number of patent applications were 218, 316, 344 and 310 respectively; of those applications the number of domestic applicants were 58, 48, 50 and 22 respectively. The majority of the domestic patent applications were in the areas of homeopathy, traditional and herbal medicines. By contrast, trademarks applications for 2004, 2005 and 2006 were much higher: 6,357, 7,425 and 6,940 respectively.

The legal basis of the Patent Office,s work is the Trademark Act of 1940 and The Patent and Design Act of 1911. Patent officials pointed out that a new trademark law is pending before the Council of Advisers. Amendments for the patents and the designs law also have been drafted. The amended patent law is intended to bring Bangladesh into compliance with the TRIPS Agreement. In a meeting with the Patents Office, it was stated that the Ministry of Agriculture is in the process of drafting legislation for the protection of plant varieties. According to one Patent official, Bangladesh

is interested in becoming a party to the Patent Cooperation Treaty (PCT), but a lack of qualified staff is a limiting factor. The official predicted Bangladesh would probably accede to the PCT by the year 2009.

To improve IPR protection in Bangladesh, a Patent Department official suggested the GOB should combine all IP related offices under one organization. The Patent Department complained of being short staffed, but said the Department will likely hire about 25 additional examiners within the next year.

CUSTOMS OFFICIALS

According to Customs officials, the GOB prohibits trade in counterfeit or pirated goods. However, they acknowledged there is a general lack of knowledge about IPR among the public and customs officers. Bangladesh Customs would welcome support from the USG for capacity building initiatives, in particular training for officers on how to distinguish between original and counterfeit goods.

Officials expressed frustration with the fact that certain senior officers who developed competence in IPR issues had been transferred. They reported there is little coordination between the Department of Patents, Designs and Trademarks and Copyright Office. Customs officials have the authority to stop consignments if they have credible information that counterfeit goods are being imported or exported, and there are anecdotal reports of seizures of counterfeit goods coming into Bangladesh from China.

COURT SYSTEM: OVERBURDENED AND INEFFECTIVE

Systemic problems in the courts prevent effective protection of intellectual property rights. The magistrate and trial courts are overburdened and rife with corruption. In the rare cases when judgments are obtained, enforcement of the judgments is problematic. Police and judges do not have the necessary training to handle IPR violations.

H) Treaties: Bangladesh is not a signatory to the 1996 WIPO Copyright Treaty (WCT) or the WIPO Performances and Phonograms Treaty (WPPT).

I) Internet Piracy: The Government of Bangladesh takes no efforts to combat internet piracy. Although no statistics are available, it is likely that internet piracy is minor aspect of IPR violations in Bangladesh. For IPR related uses, internet penetration is limited to urban middle class and elite communities. High-speed internet connections are expensive and are generally not available to most Bangladeshis.

MISSION ACTIVITIES

15. (SBU) Post works with various interest groups seeking enhanced IPR protection in Bangladesh. ECONOFF is in regular contact with the local IFPI representative regarding IPR trends and GOB enforcement efforts. ECONOFF is assisting one domestically-focused group to organize a multi-sectoral dialogue to generate specific IPR policy recommendations for the GOB. We work closely with the Foreign Commercial Service,s regional IPR attach who visited Bangladesh in September. We also have participated in awareness initiatives sponsored by the Business Software Alliance and the American Chamber of Commerce in Bangladesh.

COMMENT AND RECOMMENDATION

16. (SBU) The 2007 Special 301 reporting cable from Dhaka stated that the Bangladesh Caretaker Government,s response between 2007 and 2008 would be an important factor for the 2008 Special 301 review. Bangladesh,s Caretaker Government

is preoccupied with a host of issues including returning the country to democratic government, aiding the victims of Cyclone Sidr and two major floods, and tackling endemic corruption. These priorities have directed leadership attention away from addressing IPR protection and specifically encouraging IPR enforcement actions. As a means of encouraging the GOB to address IPR issues and its coming TRIPS commitments, Post concurs with the recommendation of industry groups and the Regional IPR Attach to include Bangladesh on the Special 301 Watch List.

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